REMARKS

Claims 9-10, 19, 21-22 are amended to delete a narrow range that falls within a recited broad range. No new matter has been added by these amendments. Accordingly, Claims 1-32 remain pending.

Applicants have carefully considered the Office Action mailed on November 26, 2008, and respectfully submit that the claims of the instant application should be allowed for at least the following reasons.

Rejection under 35 USC § 112

The Examiner rejects Claims 9-10, 19, 21-22 for indefiniteness, alleging that each claim recites a narrow range that falls within a recited broad range. Applicants respectfully submit that the amendments to Claims 9-10, 19, 21-22 obviate the Examiner's rejection.

Rejection under 35 USC § 103

The Examiner rejects Claims 1-6, 8-15, 17-23, 25, 27, 28-32 in view of Steel *et al* (WO 83/00278) combined with Grillo *et al* (U.S. 5,470,581). Claims 7 and 16 are rejected in view of Steel *et al* combined with Grillo *et al*, and Kester *et al* ("An Edible Film of Lipids and Cellulose Ether"). Claims 24 and 25 are rejected in view of Steele *et al* combined with Grillo *et al* and Fellow ("Food Processing Technology-Principles and Practice"). In addition, Claim 29 is rejected in view of Steele *et al* combined with Grillo *et al* and Seabourne *et al* (U.S. 4,820,533).

Applicants respectfully submit that the present application provides an alternative protective coating for a nut. This protective coating extends the period of useful life by enhancing the nut's stability against oxidation. In addition, by reducing the number of components of the protective coating, the coating is more simple and cost effective to prepare than other known coatings.

Steele *et al.* is concerned with the problem of maintaining the skin of the nut in order to retain its genuine flavor. In addressing this technical challenge, Steele *et al* discloses a nut coated with a first layer of pregelatinized starch; a second layer of a hydrophilic colloid film and a third layer of particulate seasoning materials. The second layer is obtained by applying a

hydrophilic colloid film former which is required to be tacky to apply thereon the particulate seasoning materials (page 8 line 12 and line 23). Steele *et al.* discloses that among the suitable materials which can be employed according to this invention are those selected from the group consisting of gum acacia gelatin, guar gum, dextrins, cellulose derivatives and vegetable protein fractions. Steele *et al.* teaches that gum acacia is particularly preferred (page 9, line 3), and in fact gum acacia is used in the single example. Grillo *et al.*, provides a method for coating substrates such as food, pharmaceutical tablets, confectionary forms, or agricultural seeds, with a protective film which shows high tensile strength and high clarity, e.g. shows reduced cloudiness. Grillo *et al.* describes a coating comprising two film forming polymers, namely, maltodextrine and a cellulose derivative, and a plasticizer. The plasticizer is an essential component of the coating being present in an amount between 2.5 to 20% to achieve a clear film with high tensile strength.

Applicants respectfully submit that the presently claimed invention is nonobvious in view of Steele *et al.* and Grillo *et al.* A person with ordinary skill in the art would not be motivated to combine Steel *et al* and Grillo *et al* to produce a coating for a nut and *protective against oxidation* because Grillo *et al* teaches away from the coating of the present application. Grillo *et al* teaches that a plasticizer is an essential component of a coating, where all claims and examples include compositions of 2.5% - 20% plasticizer. Thus, a person with ordinary skill in the art combining Steele *et al* and Grillo *et al* would have no reasonable expectation of success to produce a coating for a nut and *protective against oxidation.*

In addition, a person with ordinary skill in the art would not be motivated to combine Steel *et al* and Grillo *et al* because Steele *et al* teaches a tacky coating with a necessary degree of tackiness to adhere particulate seasoning material (page 9, lines 16-18). In contrast, Grillo *et al.* teaches that a detackifier may be desirable (column 1, line 64). Thus, a person of ordinary skill would not be motivated to combine Steele *et al.* and Grillo *et al.* where a tacky coating is desirable in Steel *et al.*

Applicants respectfully submit that Claims 1-6, 8-15, 17-23, 25, 27, and 28-32 are nonobvious in that a person of ordinary skill in the art would have no motivation to combine Steele *et al* and Grillo *et al.* For at least the same reasons, Applicants submit that Claims 7, 16, 24-25, and 29 are also nonobvious.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 20th, 2009

By: _____

Mark D. Marsden
Registration No. 57,871
Attorney of Record
Customer No. 20995
(619) 235-8550

6651666
021709